

Peter M. Williamson, State Bar No. 97309
WILLIAMSON LAW FIRM
20750 Ventura Blvd., Suite 345
Woodland Hills, CA 91364
Telephone: (818) 226-5700
Facsimile: (818) 226-5704
E-Mail: pmw@pwilliamsonlaw.com

Attorneys for Plaintiffs FERREOL CARDENAS, SR, Individually,
and as the Personal Representative for FERREOL CARDENAS, JR.,
Deceased and ROSA CARDENAS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FERREOL CARDENAS, SR.,
Individually, and as the Personal
Representative for FERREOL
CARDENAS, JR., Deceased and ROSA
CARDENAS,

Plaintiffs,

vs.

CITY OF MANHATTAN BEACH,
MANHATTAN BEACH POLICE
OFFICER MICHAEL LYNCH (Serial
No. 313), MANHATTAN BEACH
POLICE OFFICER B. MUZATKO
(Serial No. 342) and Does 1 through 10,
inclusive, ,

Defendants.

Case No. 2:-15-cv-1469

COMPLAINT FOR DAMAGES FOR:

1. 42 U.S.C. § 1983 – WRONGFUL DEATH
2. 42 U.S.C. § 1983 – SURVIVAL ACTION;
3. 42 U.S.C. § 1983 – DEPRIVATION OF THE RIGHTS OF PLAINTIFFS TO FAMILIAL RELATIONSHIPS WITH THE DECEDENT
4. 42 U.S.C. § 1983 – GOVERNMENTAL LIABILITY (MONELL)
5. CAL. CIV. CODE § 52.1;
6. ASSAULT and BATTERY; and
7. POLICE NEGLIGENCE

DEMAND FOR JURY TRIAL

JURISDICTION

1
2 1. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331 (federal question)
3 and § 1343(3) (civil rights). The state law claims for relief are within the supplemental
4 jurisdiction of the Court pursuant to 28 U.S.C. § 1367.

VENUE

5
6 2. Plaintiff's claims herein arise out of an incident involving Manhattan Beach
7 Police Officers, in the County of Los Angeles, State of California, and within this judicial
8 district.

PARTIES

9
10 3. Plaintiff, Ferreol Cardenas, Sr., is a competent adult who appears here
11 individually and as the successor in interest for Ferreol Cardenas, Jr., deceased (hereinafter
12 "Decedent"). He is the father of the decedent, Ferreol Cardenas, Jr., and therefore qualifies
13 as his successor in interest pursuant to *Calif. Code of Civil Proc.* § 377.30. Plaintiff, Rosa
14 Cardenas, is also a competent adult. She is the mother of the decedent, Ferreol Cardenas,
15 Jr., and therefore also qualifies as his successor in interest pursuant to *Calif. Code of Civil Proc.*
16 § 377.30.

17 4. Defendant, City of Manhattan Beach is a municipality operating pursuant to
18 its Charter. It is a local government entity and is not an arm of the State of California for
19 Eleventh Amendment purposes.

20 5. Manhattan Beach Police Officers Michael Lynch and B. Muzatko are, and at
21 all times relevant hereto, were sworn police officers. In doing the acts herein alleged,
22 Officers Lynch and Muzatko acted within the course and scope of their agency and
23 employment, and under color of state law.

24 6. Plaintiffs sue defendants DOES 1 to 10 by such fictitious names because their
25 true identities are presently unknown to Plaintiffs. Upon ascertaining the true identity of
26 a defendant Doe, Plaintiffs will amend this Complaint or seek leave to do so by inserting
27 the true name in lieu of the fictitious name. Plaintiffs are informed and believe, and on the
28 basis of such information and belief allege, that each defendant Doe herein is in some

1 manner responsible for the injuries and damages herein alleged.

2 **FACTS**

3 **A. Allegations Regarding the Excessive Use of Force on Ferreol Cardenas, Jr.**

4 7. On the evening of April 10, 2014 at approximately 9:00 p.m., Decedent was
5 alone and driving his vehicle westbound on Rosecrans Avenue in the City of Manhattan
6 Beach, California.

7 8. Defendant Lynch was in uniform working patrol duty for the Manhattan
8 Beach Police Department ("MBPD"), driving a marked patrol unit when he observed
9 Decedent's vehicle which did not appear to have a license plate affixed to its rear bumper.
10 Defendant Lynch claims that Decedent's vehicle suddenly changed lanes allegedly almost
11 striking his patrol vehicle.

12 9. Defendant Lynch activated his emergency lights and attempted to effect a
13 traffic stop of Decedent's vehicle. Decedent allegedly did not stop his vehicle but continued
14 traveling westbound on Rosecrans Avenue eventually turning into a driveway adjacent to
15 a parking structure at 2371 Rosecrans Avenue in El Segundo, California.

16 10. Defendant Lynch claims that Decedent eventually stopped his vehicle at
17 approximately the end of the driveway, exited the driver's side and began to run eastbound
18 along the exterior of the parking structure. Defendant Lynch allegedly gave Decedent
19 repeated commands to stop and lay on the ground which were ignored.

20 11. Defendant Lynch claims that Decedent eventually stopped running placing his
21 left arm by his side with his right arm in front of his waistband. Decedent allegedly
22 continued to ignore Defendant Lynch's commands to stop instead walking northbound at
23 a fast pace. Defendant Lynch claims he warned Decedent that if he did not stop, he would
24 be tased.

25 12. When he was approximately three feet from Decedent, Defendant Lynch fired
26 his department issued TASER Electronic Control Device ("ECD") in probe mode. The
27 ECD was immediately effective, its two darts striking Decedent in the back discharging
28 50,000 volts of electrical current into the body of Decedent.

1 13. After being struck by the TASER darts, Decedent's body immediately went
2 rigid and he became completely incapacitated causing him to fall to the ground, although
3 according to Defendant Lynch, the decedent's head did not strike the ground. The electrical
4 discharge from the TASER lasted at least one full five-second cycle.

5 14. Defendant Lynch further claims that Decedent thereafter sat up, bent his knees
6 towards his chest and placed his feet on the ground. Decedent remained in that position
7 making no attempt to flee. Eventually, Defendant MBPD Officer Muzatko arrived at the
8 scene as back-up to assist Defendant Lynch.

9 15. Without further resistance by Decedent, Defendants Lynch and Muzatko
10 forcibly pushed Decedent onto his stomach, and forcibly took control of his arms. In the
11 process of restraining Decedent, who was unarmed and non-resistant, Defendants and each
12 of them physically assaulted and battered the Decedent repeatedly striking him in the head,
13 face and body with their fists and, as yet, unknown other instruments, causing him to suffer
14 multiple skull fractures, facial injuries, brain injuries including subdural hemorrhages, and
15 other serious, life-threatening injuries.

16 16. Plaintiff was transported to Little Company of Mary Hospital in Torrance,
17 California, where he was treated for, among other things, head trauma. Decedent remained
18 in Little Company of Mary Hospital from April 10, 2014 until April 15, 2014 at which time
19 he was released. Decedent returned to Little Company of Mary Hospital on April 22, 2014
20 complaining of severe headaches and neck stiffness. He was admitted to the Hospital at
21 that time and, shortly thereafter, moved to the intensive care unit where he was eventually
22 put on life support, unable to communicate or move his limbs. Decedent died of head
23 trauma on April 25, 2014.

24 **B. Allegations Regarding Damages**

25 17. Plaintiffs have lost support from decedent, as well as their son's love, comfort
26 and society, and have sustained emotional distress and other compensable losses, all in
27 amounts in accordance with proof. Plaintiffs have incurred funeral, burial and other related
28 expenses. The decedent sustained general damages, including the loss of enjoyment of his

1 life, in an amount in accordance with proof.

2 18. The conduct of the defendants was willful, malicious, oppressive and in
3 reckless disregard for the constitutional rights of Plaintiffs and the Decedent himself, thus
4 justifying punitive damages against defendants Lynch, Muzatko and Does 1-10, but not the
5 City of Manhattan Beach, which is immune from such damages, in an amount in accordance
6 with proof.

7 **C. Allegations Regarding Exhaustion of Administrative Remedies**

8 19. Plaintiffs timely filed administrative claims with the City of Manhattan Beach
9 pursuant to *Calif. Gov't Code* § 910 on June 20, 2014. Plaintiffs' claims were denied on
10 September 23, 2014 and this action is, therefore, timely filed.

11 **FIRST CAUSE OF ACTION**

12 (42 U.S.C. § 1983 – WRONGFUL DEATH)

13 (Against MBPD Officers Lynch, Muzatko and Doe Defendants)

14 20. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
15 19, hereinabove, and incorporate the same herein as though fully set forth.

16 21. Defendants, MBPD Officers Lynch, Muzatko, and one or more of the Doe
17 defendants, acting under color of state law, deprived the decedent of rights, privileges, and
18 immunities secured by the Constitution and laws of the United States, including those
19 secured by the Fourth Amendment to the Constitution, incorporated and made applicable
20 to the states by the Fourteenth Amendment, by among other things, subjecting Decedent
21 to excessive force including, but not limited to, shocking him with one or more TASER
22 ECDs, and repeatedly striking and beating him around the face and head until such beating
23 caused him to suffer multiple skull fractures and subdural hemorrhages resulting in his
24 death.

25 22. Plaintiffs are the proper parties with standing pursuant to *Calif. Code of Civ. Proc.*
26 § 377.60 to pursue this wrongful death claim pursuant to section 1983.

27 23. Plaintiffs have been damaged, including pecuniary loss and other compensable
28 injuries resulting from loss of love, society, comfort, attention, services, and support of the

1 decedent, in an amount in accordance with proof.

2 24. As a further proximate result of the acts of defendants, as alleged above,
3 plaintiffs have incurred expenses, including funeral and burial expenses, in an amount in
4 accordance with proof.

5 25. In doing the foregoing wrongful acts, Defendants, MBPD Officers Lynch,
6 Muzatko, and one or more of the Doe defendants, and each of them, acted in reckless and
7 callous disregard for the constitutional rights of the decedent. The wrongful acts, and each
8 of them, were willful, oppressive, fraudulent, and malicious, thus warranting the award of
9 punitive damages against each individual defendant (but not the entity defendant, which is
10 immune from such damages) in an amount adequate to punish the wrongdoers and deter
11 future misconduct.

12 **SECOND CAUSE OF ACTION**

13 (42 U.S.C. § 1983 – SURVIVAL ACTION)

14 (Against MBPD Officers Lynch, Muzatko and Doe Defendants)

15 26. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
16 25, hereinabove, and incorporate the same herein as though fully set forth.

17 27. Plaintiff, Ferreol Cardenas, Sr., brings this claim for relief in his capacity as the
18 successor in interest of the decedent, for whom there is no estate opened.

19 28. The foregoing claim for relief arose in the decedent's favor, and the decedent
20 would have been the Plaintiff with respect to this claim for relief had he lived.

21 29. Defendants, MBPD Officers Lynch, Muzatko, and one or more of the Doe
22 defendants, and each of them, acting under color of state law, deprived the decedent of
23 rights, privileges, and immunities secured by the Constitution and laws of the United States,
24 including those secured by the Fourth Amendment to the Constitution, incorporated and
25 made applicable to the states by the Fourteenth Amendment, by, among other things,
26 subjecting decedent to excessive force including, but not limited to, shocking him with one
27 or more TASER ECDs, and repeatedly striking and beating him around the face and head
28 until such beating caused him to suffer multiple skull fractures and subdural hemorrhages

1 resulting in his death.

2 30. As a proximate result of the foregoing wrongful acts of defendants, and each
3 of them, the Decedent sustained general damages, including pain and suffering, and a loss
4 of the enjoyment of life and other hedonic damages, in an amount in accordance with
5 proof.

6 31. In doing the foregoing wrongful acts, defendants, and each of them, acted in
7 reckless and callous disregard for the constitutional rights of the Decedent. The wrongful
8 acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus warranting
9 the award of punitive damages against each individual defendant (but not the entity
10 defendant, which is immune from such damages) in an amount adequate to punish the
11 wrongdoers and deter future misconduct.

12 **THIRD CAUSE OF ACTION**

13 (42 U.S.C. § 1983 – DEPRIVATION OF THE RIGHTS OF
14 PLAINTIFFS TO FAMILIAL RELATIONSHIPS WITH THE DECEDENT)

15 (Against MBPD Officers Lynch, Muzatko and Doe Defendants)

16 32. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
17 31, hereinabove, and incorporate the same herein as though fully set forth.

18 33. Defendants, MBPD Officers Lynch, Muzatko, and one or more of the Doe
19 Defendants, acting under color of state law, deprived plaintiffs of their right to a familial
20 relationship with the Decedent without due process of law in violation of the Fourteenth
21 Amendment by their conscience shocking use of unreasonable, unjustified force and
22 violence, which violated Decedent's Fourth Amendment rights, causing injuries, which
23 resulted in the Decedent's death, all without provocation.

24 34. As a proximate result of the foregoing wrongful acts of Defendants, MBPD
25 Officers Lynch, Muzatko, and one or more of the Doe Defendants, and each of them,
26 Plaintiffs sustained general damages, including grief, emotional distress and pain and
27 suffering and loss of love, comfort and society, and special damages, including loss of
28 support, in an amount in accordance with proof.

35. In doing the foregoing wrongful acts, Defendants, MBPD Officers Lynch, Muzatko, and one or more of the Doe Defendants, and each of them, acted in reckless and callous disregard for the constitutional rights of Plaintiffs and the Decedent. The wrongful acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus warranting the award of punitive damages against each individual defendant (but not the entity defendant, which is immune) in an amount adequate to punish the wrongdoers and deter future misconduct.

FOURTH CAUSE OF ACTION

42 U.S.C. § 1983 – Governmental Liability (Monell)

[Against Defendant City of Manhattan Beach]

36. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 35, hereinabove, and incorporates the same herein as though fully set forth.

37. On or about April 10, 2014 , there existed a clearly established federal right protecting citizens of the United States from failures of training or supervision of police officers which give rise to the level of deliberate indifference to rights of citizens in violation of the due process requirements of the Fourteenth Amendment.

38. Defendant, City of Manhattan Beach, through the Manhattan Beach Police Department, is charged with the responsibility of supervising the operations of its personnel and are obligated to insure that its personnel are adequately trained and supervised so that they may carry out their duties without violating the constitutional rights of United States citizens.

39. Defendant, City of Manhattan Beach, knew to a moral certainty, that its employees would commit criminal wrongdoing and/or violate the civil rights of citizens.

40. In matters regarding a police officer engaging in criminal or inappropriate conduct, lack of proper supervision and investigation of the deputy and his/her activities will frequently cause a deprivation of a citizen's constitutional rights and at all times relevant hereto, it was foreseeable that said deliberate indifference would cause harm to Plaintiffs' decedent.

1 41. Plaintiffs are informed and believe, and on the basis of such information and
2 belief allege, that Defendant, City of Manhattan Beach, through the Manhattan Beach Police
3 Department, with deliberate indifference, gross negligence, and reckless disregard for the
4 safety, security, and constitutional and statutory rights of Plaintiffs' decedent, and all persons
5 similarly situated, maintained, enforced, tolerated, permitted, acquiesced in, and applied
6 policies, practices, or customs and usages of, among other things:

- 7 a) Subjecting citizens to unreasonable uses of force against their persons;
8 b) Selecting, retaining, and assigning officers with demonstrable
9 propensities for excessive force, violence, and other misconduct;
10 c) Failing to adequately train, supervise, and control officers in the arts of
11 law enforcement, including, without limitation, the use of force during detentions and
12 arrests;
13 d) Failing to adequately discipline officers involved in misconduct; and
14 e) Condoning and encouraging officers in the belief that they can violate
15 the rights of persons such as Plaintiffs' decedent in this action with impunity, and that such
16 conduct will not adversely affect their opportunities for promotion and other employment
17 benefits.

18 42. Plaintiffs are informed and believe, and on the basis of such information and
19 belief allege, that Defendant City of Manhattan Beach, through the Manhattan Beach Police
20 Department, ordered, authorized, acquiesced in, tolerated, permitted or maintained customs
21 and practices permitting the other Defendants herein to engage in the unlawful and
22 unconstitutional actions, policies, practices, and customs or usages set forth in the foregoing
23 paragraphs. Defendant's conduct as alleged herein constitutes a pattern of constitutional
24 violations based either on a deliberate plan by Defendants or on Defendant's deliberate
25 indifference, gross negligence, or reckless disregard to the safety, security, and rights of
26 Plaintiffs' decedent.

27 43. The failure of Defendant, City of Manhattan Beach, through the Manhattan
28 Beach Police Department, to intervene in its officers' unlawful conduct and their knowing

1 failure to prevent officers from using the pretense of state employment in such conduct
 2 demonstrated a deliberate indifference to the rights of citizens of the United States and gave
 3 rise to a reasonably foreseeable violation of the rights of Plaintiffs and Plaintiffs' decedent.

4 44. Plaintiff is informed and believes, and on the basis of such information and
 5 belief alleges, that the constitutional violations suffered by Plaintiffs and Plaintiffs' decedent,
 6 were proximately caused by the policies of the City of Manhattan Beach, through the
 7 Manhattan Beach Police Department, which fostered illegal activity of its officers and
 8 retaliated against officers who made reports or complaints of wrongful conduct.

9 45. At all times relevant hereto, the policies and practices of the City of Manhattan
 10 Beach, through the Manhattan Beach Police Department, were insufficient to prevent
 11 substantial and continuing civil rights abuses by its officers.

12 46. Defendant, City of Manhattan Beach, violated Decedent's Fourteenth
 13 Amendment constitutional rights as previously stated herein in violation of 42 U.S.C. §1983.

14 47. Each of the aforementioned deprivations of its citizens' constitutional rights
 15 demonstrates an objectively unreasonable failure to train or supervise on the part of
 16 Defendant, City of Manhattan Beach, through the Manhattan Beach Police Department, and
 17 constitutes deliberate indifference to the rights of citizens of the State of California, and
 18 Plaintiffs' decedent in particular.

19 48. This violation of Decedent's Fourth and Fourteenth Amendment rights by
 20 Defendant, City of Manhattan Beach, caused Plaintiffs and Plaintiffs' decedent injuries,
 21 damages, and losses, including, but not limited to, a deprivation of constitutionally protected
 22 rights, and such other and further damages as are described herein.

23 **FIFTH CAUSE OF ACTION**

24 (Cal. Civ. Code § 52.1)

25 (Against All Defendants)

26 49. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
 27 48, hereinabove, and incorporate the same herein as though fully set forth.

28 50. The United States Constitution, Amend. IV, and the California Constitution,

1 Art. I § 13, guarantee the right of persons to be free from excessive force. Defendants, by
 2 engaging in the wrongful conduct alleged herein, denied this right to the Decedent and
 3 Plaintiffs, thus giving rise to claims for damages pursuant to *Calif. Civ. Code* § 52.1.

4 51. Plaintiffs are the proper party with standing pursuant to *Calif. Code of Civ. Proc.*
 5 § 377.60 to pursue the wrongful death claim pursuant to section 52.1.

6 52. As a direct and proximate cause of the aforementioned acts of defendants,
 7 decedent and plaintiffs were injured as set forth above, and are entitled to statutory damages
 8 under *Calif. Civ. Code* § 52, as well as compensatory damages, and punitive damages against
 9 the individual defendants only (the entity defendants are immune) according to proof.

10 **SIXTH CAUSE OF ACTION**

11 (ASSAULT AND BATTERY)

12 (Against All Defendants)

13 53. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
 14 52, hereinabove, and incorporate the same herein as though fully set forth.

15 54. Defendants assaulted and battered the Decedent, causing his death. These torts
 16 are actionable under the Government Tort Claims Act, specifically *Calif. Govt. Code* § 820,
 17 *et seq.*, and Defendant City of Manhattan Beach is vicariously liable for the acts of its officers
 18 pursuant to *Calif. Govt. Code* § 815.2(a).

19 55. As a direct and proximate cause of the aforementioned acts of defendants,
 20 Decedent and Plaintiffs were injured as set forth above, and are entitled to compensatory
 21 and punitive damages (Defendant City of Manhattan Beach is immune) according to proof.

22 **SEVENTH CAUSE OF ACTION**

23 (POLICE NEGLIGENCE)

24 (Against All Defendants)

25 56. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
 26 55, hereinabove, and incorporate the same herein as though fully set forth.

27 57. By virtue of the foregoing, defendants owed Decedent and Plaintiffs a duty of
 28 due care, and such duty was breached in that Defendants' negligence and failure to exercise

1 due care in dealing with the Decedent proximately causing his death. Defendant City of
 2 Manhattan Beach, through the Manhattan Beach Police Department, breached its mandatory
 3 duty by failing to adequately train and supervise its police officers in the risks of and use of
 4 ECDs, as well as the use of force with respect to the restraint, apprehension and detention
 5 of individuals such as the Decedent.

6 58. As a direct and proximate cause of the aforementioned acts of defendants,
 7 Decedent and Plaintiffs were injured as set forth above, and are entitled to compensatory
 8 damages according to proof.

9 **PRAYER**

10 WHEREFORE, plaintiffs pray for judgment as follows:

11 **On All Causes of Action**

- 12 (a) Compensatory general and special damages in accordance with proof;
 13 (b) Costs of suit necessarily incurred herein; and
 14 (c) Reasonable attorney's fees and expenses of litigation (except on the Sixth and
 15 Seventh causes of action); and
 16 (d) Such further relief as the Court deems just or proper.

17 **On the Fifth Cause of Action**

- 18 (e) Statutory damages;

19 **On the First, Second, Third, Fifth and Sixth Causes of Action**

- 20 (f) Exemplary damages against the Defendants (except the immune public entity
 21 defendant, City of Manhattan Beach) in an amount sufficient to make an example of those
 22 defendants and to deter future misconduct.

23 DATED: February 28, 2015

WILLIAMSON LAW FIRM

24
 25 BY: /s/ PETER M. WILLIAMSON
 26 PETER M. WILLIAMSON, Esq.
 27 Attorneys for Plaintiffs
 28 FERREOL CARDENAS, SR, Individually,
 and as the Personal Representative for
 FERREOL CARDENAS, JR.,
 Deceased and ROSA CARDENAS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury pursuant to Fed. R. Civ. P. 38(b).

DATED: February 28, 2015

WILLIAMSON LAW FIRM

BY: /s/ PETER M. WILLIAMSON
PETER M. WILLIAMSON, Esq.
Attorneys for Plaintiffs
FERREOL CARDENAS, SR, Individually,
and as the Personal Representative for
FERREOL CARDENAS, JR.,
Deceased and ROSA CARDENAS